

REMARKS

The examiner is thanked for the Office Action dated December 17, 2004. This amendment and request for reconsideration is intended to be fully responsive to the Office Action.

In the Office Action, claims 15-18 and 20 were withdrawn by the examiner as directed to a non-elected invention. Claims 3, 5, 7, 8, 10, and 13 were rejected under 35 U.S.C. 112, first paragraph as being indefinite. Claims 1-3, 11, 14, and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,273,402 to Maury in view of U.S. Patent 4,625,937 to Haase, and further in view of U.S. Patent 6,158,701 to Deshler. Claims 4-10 and 13 are rejected under 35 U.S.C. 103(a) over Murray in view of Haase and further in view of Deshler, and further in view of U.S. Patent 6,560,794 to Allen. Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over Maury in view of Haase, and further in view of Deshler, and further in view of U.S. Patent 3,519,234 to Matson.

With regard to non-elected claims 15-18, and 20, the non-elected claims are canceled in this amendment.

With regard to the rejection of claims 3, 5, 7, 8, 10, and 13 under 35 U.S.C. 112 first paragraph, claims 3, 5, 7, 8, 10, and 13 have been amended to correct the informalities cited by the examiner.

With regard to the 35 U.S.C. 103(a) rejection of independent claim 1, independent claim 1 has been amended to indicate that the horizontal base is comprised of a first member and a second member. The first member has parallel legs, and a second member that is disposed opposite the first member also has parallel legs. The second member parallel legs extend parallel to and are spaced from the first member parallel legs. The first member is connected to the

second member so that the horizontal base forms a T-shaped outline. A base plate is secured to adjacent ones of the first and second member parallel legs. Support for the amendment is shown in Figures 1 and 3. None of the prior art references cited by the examiner includes the subject matter claimed in amended independent claim 1.

Independent claim 1 was rejected, in part, based on the base portion of the stand disclosed on Deshler. However, the base disclosed by Deshler does not include the subject matter claimed in amended independent claim 1 for multiple reasons. First, as described in Deshler column 8, lines 36-37, Deshler does not teach a horizontal base as claimed in amended independent claim 1. The Deshler base is oriented downwardly to allow stacking of the stands 10, as shown in Deshler Figure 3. Second, because the T shape of the Deshler base is only formed by two perpendicular members, the base does not include parallel legs associated with the first and second members, as claimed in amended independent claim 1. Third, as indicated in Deshler column 8 lines 39-40 the bracket 58 (base plate) that supports the vertical post 12 is attached only to the center brace 57, and is not therefore attached to adjacent parallel legs of the first and second members, as claimed in amended independent claim 1. Fourth, although a portion of the base of Deshler arguably forms a T shape, it does not form a T-shaped outline, as specifically claimed in amended independent claim 1.

The dependent claims further distinguish the current invention from Deshler and the other references cited by the examiner. Claim 4 claims that the base plate is connected to the first member at an intermediate point and the second member adjacent to an end point. As indicated above, the bracket 58 of Deshler is only connected to the center brace 57. Dependent claim 11 claims that the base plate has a planar rectangular shape. The bracket 58 disclosed by Dresler is

essentially hollow in order to accommodate the post 12 and the center brace 57, and is neither planar nor rectangular. Additional distinguishing characteristics also exist.

Further, the examiner states that it would have been obvious to one of ordinary skill in the art to modify Maury in view of Haase to have a base plate and horizontal base as taught by Deshler for the purpose of providing lateral stability. However, as noted above, the Deshler base is not horizontal. Additionally, the hollow bracket 58 disclosed by Deshler does not add lateral stability, it merely connects the vertical post 12 to the center brace 57. Further, the Deshler base is a trapezoidal framework mounted on wheels and is designed to support stationary parts, whereas the Maury base is solid and more substantial, and is designed to support a rotary component (a fan). Clearly modifying the solid, stationary base of Maury into a rolling framework as taught by Deshler would not add lateral stability, and in fact would result in a less stable base that may not support the rotary fan of Maury in a stable manner. Further, neither Haase, Maury, or Deshler teaches a valid motivation to combine their respective inventions.

As indicated in MPEP 2143.01, the prior art must suggest a motivation to combine the cited references. Even if the references actually taught the subject matter of the invention (and in this case they do not), without a motivation taught by the prior art to combine the references, a prima facie case of obviousness is improper. The lack of motivation to combine Maury, Haase, and Deshler indicates that the examiner is using impermissible hindsight to construct the Applicant's invention. As stated in MPEP 2141.01, the references must be viewed without benefit of impermissible hindsight afforded by the claimed invention.

With regard to the examiner's design choice rejection, as indicated above, the Applicant clearly shows the importance of the T-shaped outline. As stated on page 5 in line 11 of the specification, the T-shaped outline formed by the horizontal base support members 28, 30, 32

provides the stand 1 with lateral and longitudinal stability. As further indicated on page 6, lines 2-3 of the current specification, the T-shaped outline of the horizontal base 6 is preferred because it provides adequate vertical stability, minimal weight, and maximum area for locating boxes of the product, as shown in Figures 1, 2, and 4. To sustain a design choice rejection there must be no substantial advantage realized from the use of the claimed subject matter over the structure of the prior art (See *In re Dembiczak*, 50 USPQ 2d 1614 (Fed. Cir. 1999)). Here, as indicated above, the tubular T-shaped design of the Applicant's horizontal base provides a stand with adequate vertical stability, minimal weight, and provides a maximum area for locating boxes of the product.

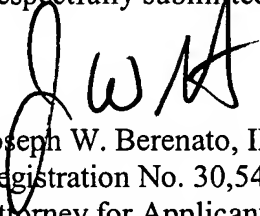
It is respectfully submitted that independent claim 1 is in condition for allowance. Since claims 2-14 and 19 are dependent on independent claim 1, it is submitted that claims 1-14 and 19 are also in condition for allowance.

With regard to new claims 21-25, new independent claim 21 claims that an extended portion of the horizontal base projects into the T-shaped outline. Since the examiner apparently asserts that the perpendicular members shown in Deshler form a T-shaped outline, Deshler does not disclose an extended portion of the base that projects into the T-shaped outline. It would be impermissible double inclusion to suggest that the elements that form the T-shaped outline also extend into the T-shaped outline. As indicated in MPEP 2143.03, to establish a prima facie obviousness, all claimed limitations must be taught or shown in the prior art. Dependent claims 22-25 further distinguish the current invention from the prior art. New dependent claim 23 claims that the upper surface of the horizontal base forms a planar horizontal display surface that is elevated from the floor. The base disclosed by Deshler is neither planar nor horizontal. None

of the other prior art cited by the examiner includes this subject matter. It is respectfully submitted that claims 21-25 are also in condition for allowance.

It is submitted that the foregoing arguments and amendments resolve all outstanding issues and place the current application in condition for allowance. If the examiner believes that a personal discussion of the application would advance prosecution, the examiner is encouraged to contact applicant's attorney at the phone number listed below. It is believed that no additional charges are due for this submission. However, if this is incorrect, please debit Account 50-0548 and contact the undersigned.

Respectfully submitted,



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